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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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| COUNTY OF SAN DIEGO,<br><br>Respondent,<br><br>v.<br><br>M.V.,<br><br>Respondent;<br><br>P.R.,<br><br>Appellant. | D072309<br><br><br><br>(Super. Ct. No. DF122089) |

APPEAL from a postjudgment order of the Superior Court of San Diego County, Terrie E. Roberts, Commissioner. Affirmed.

The Law Offices of Saylin & Swisher, Brian G. Saylin and Lindsay L. Swisher for Appellant P.R.

National Coalition for Men and Marc E. Angelucci for Respondent M.V.

No appearance for Respondent County of San Diego.

This is an appeal from a postjudgment order of the superior court staying the mother, P.R., from enforcing the collection of child support arrearages (unpaid support and interest) from the legal father, M.V., of the child, M.A.V. The court found that P.R. had unclean hands related to the collection of child support from M.V. and, on the basis of that finding and an exercise of the court's equitable discretion, precluded P.R from collecting the arrearages and interest. As we explain, in so ruling, the court did not abuse its discretion. Accordingly, we affirm the postjudgment order.

## I. FACTUAL AND PROCEDURAL BACKGROUND[1]

P.R. gave birth to M.A.V. in May 1999, and at all relevant times since then has been M.A.V.'s custodial parent. In August 1999, the County of San Diego (County) named M.V. as the defendant in the underlying complaint to establish that he was a parent of M.A.V. and to set appropriate child support. In the complaint, the County affirmatively alleged that M.A.V. was not receiving any public assistance.[2]

Based on M.V.'s written stipulation, in September 1999 the court entered a judgment that M.V. was M.A.V.'s parent and would pay child support for M.A.V.

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1 We view and recite the evidence in a light most favorable to the order on appeal. (*In re Marriage of Kamgar* (2017) 18 Cal.App.5th 136, 147; *In re Marriage of Whealon* (1997) 53 Cal.App.4th 132, 143 ["classic mistake" for appellant to rely on evidence favorable to appellant, rather than on "evidence favorable to the judgment"].)

2 The record on appeal does not contain any evidence to the contrary. Additionally, in the statement of decision, the trial court expressly found both that "there is no evidence that [P.R.] was ever on public assistance" and there *is* "[e]vidence that [M.A.V.'s] needs were met during this 14-year period" after M.V.'s wages were no longer garnished. P.R. does not challenge these findings on appeal. We express no opinion on whether the provision of public assistance to P.R. or to M.A.V. would dictate a different result.

Following notice and a hearing, in August 2001 the court entered an order setting M.V.'s monthly child support obligation at $203 commencing April 1, 2001, and requiring M.V. to provide health insurance for M.A.V.

The record on appeal contains no indication of court activity between August 2001 and January 2013, when M.V. filed an application to set aside his August 1999 declaration of paternity. In part, M.V. based his application on an October 2000 DNA parentage test report that he contended disclosed M.A.V. was not his child. The County opposed M.V.'s application on the basis that it was untimely (by more than 10 years; see Fam. Code, § 7575, subd. (c)(1)). P.R. did not oppose the application. In March 2013, the court denied M.V.'s application.

In June 2013, M.V. filed a motion to set aside the judgment of paternity and to dismiss the action. In support, M.V. testified that, at the time he signed the stipulation of paternity, no one explained to him what his rights were; in particular, M.V. testified that P.R. was present when he signed the stipulation and told him that he was M.A.V.'s father. He further testified in greater detail about the October 2000 DNA parentage report, including P.R.'s reaction and response:

> "2. I got the results back in October 2000. The chance of paternity was zero. I confronted [P.R.] about it, she was very upset with me about the test. I was upset that she would not tell me who the father was. She told me she was going to contact the District Attorney and tell them I was not the father. Shortly thereafter, they stopped garnishing my wages. I hadn't changed jobs they just stopped taking my pay. I was still responsible for medical expenses but finally that stopped too. I thought everything was resolved. [¶] 3. By this time [P.R.] was already pregnant with someone else's child. . . . [¶] 4. I didn't hear anything else about the case for a long time after that and I thought it was over."

The County opposed the motion, once again in part on the basis that M.V.'s requests were untimely.[3] In July 2013, the court denied M.V.'s motion to set aside the judgment on the basis that M.V. had not presented any evidence of extrinsic fraud related to M.V.'s stipulation, or the entry of judgment, of paternity in 1999.

In July 2016, the County filed a request for an order modifying M.V.'s child support and health care obligation. The County included income and expense declarations from P.R. and M.V., visitation verification forms from P.R. and M.V., and guideline calculations results based on the information provided.[4] According to the County, a "participant in the case" had requested the modification, and the County asserted that the modification was "warranted as there has been a change in circumstances." Later evidence confirmed that P.R. was the participant who requested the modification.

M.V. opposed the County's request to the extent it required him to pay child support or to provide medical insurance on the basis that M.A.V.'s biological father, not M.V., should be required to pay support and provide insurance. Consistent with his June 2013 declaration, M.V. testified in August 2016:

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3 The County's June 2013 opposition advised that, in the almost 12 years since the court set the monthly amount of child support of $203 in August 2001, the County had collected two payments in *October 2001* for a total of $281.07.

4 The various statements and forms were consistent: As of June 2016, M.V. had not seen M.A.V. since 2002. In June 2016, M.A.V. was 17 years old—i.e., less than one year from emancipation—and in 2002, M.A.V. would have been between two and three years old.

> "[P.R.'s] son was born May […] 1999. She stated I was the father. Four months later she convinced me to sign a declaration of paternity under false pretenses. I would have challenged it in court if I had known I am not the father. She knew at that time that I could not be the biological father. A few months later, we parted ways and [P.R.] opened a child support case against me. I had only been in her child's life for less than a year. Through several conversations [P.R.] admitted that I am not the biological father. Based on her statement, in October 2000 I had a paternity test done. The results confirmed [P.R.'s] statements made in 1999 that I am not the biological father of her child, please see [attached copy of October 2000 DNA parentage test report]. I confronted her with the results. After discussing it, we both agreed that I would no longer be a part of her son's life. She closed the child support enforcement case against me. At this point, her son was a little over a year old. We both moved on with our lives. I started a family on my own with my three beautiful children, so did [P.R.]. Her significant other raised her son as his own and they had two more children together. Since she dropped the child support case, I did not go to court to fight paternity.
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> ". . . On several occasions [after the court denied my motion to set aside my declaration of paternity in July 2013], [P.R.] conveyed to me that she was trying to change her son's legal father, which still named me. She was not enforcing child support until January 2015, when I received information that she retained an attorney and shortly after I was notified by [the County] that [P.R.] opened a case against me to enforce child support. I would have challenged my paternity status[] in court if she hadn't lied to me about being the father.
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> ". . . I have also not challenged my paternity status sooner because [P.R.] ensured me on numerous occasions that she was trying to change the legal status as the father of her child, [citing an attached exhibit]."

The attached exhibit referenced in M.V.'s declaration contained a March 2014 e-mail from P.R. to M.V. in which P.R. communicated that she was "still working on trying to change [M.A.V.'s] name," but that she "[didn't] plan on getting married just to fix this (sorry)." In his accompanying memorandum of points and authorities, M.V. argued that,

based on the evidence presented—in particular, that "[P.R.] lied to [M.V.] about his paternity" and "[P.R.] continued to be untruthful by telling [M.V.] she would not demand support for [M.A.V.]"—"equity and fairness present compelling reasons to deny the support obligation allegedly owed by [M.V.]."

Additionally, also in July 2016, P.R. filed her own request for an order to account for child support arrears from M.V. According to the evidence P.R. submitted: M.V. had not made any payments between April 2001 and March 2015; M.V. had made payments of $3,079.77 between April 2015 and June 2016;[5] and M.V. owed $34,069.23 in principal (i.e., unpaid child support) and $49,210.79 in interest—for a total of $83,280.02 in arrearages.

M.V. opposed P.R.'s request for an order to account for child support arrears. Based on much of the evidence set forth above, M.V. argued that, because he was the victim of intrinsic and extrinsic fraud by P.R.—"who knows the true identity of [M.A.V.'s] biological father"—equity "demands" that the court find he is not responsible for the arrearages. M.V. also presented a laches argument against the County recovering the arrearages, even though the County had not requested such relief.

In September 2016, the superior court heard the County's request for an order modifying M.V.'s child support and health care obligation and P.R.'s request for an order to account for child support arrears. The court ruled as follows: (1) with regard to M.V.'s defense regarding paternity, the court previously had decided that M.V. was

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5 Later evidence indicated that, in early 2015, P.R. had "opened a case against [M.V.] to enforce child support."

M.A.V.'s parent, the earlier ruling was res judicata, and any request by M.V. to set aside the paternity judgment was denied; (2) effective August 1, 2016, M.V.'s monthly child support obligation would become $579; and (3) arrearages were set, as requested, at $34,069.23 for the period April 2001 through June 2016 and interest at $49,210.79 through June 2016—payable at a monthly rate of $75 beginning October 1, 2016 (Arrearages Order).[6]

Significantly, at the end of the hearing, M.V. (not through counsel) asked the court why P.R. was entitled to arrears "if she was never enforcing the [child support] orders?" In response to the court's question as to why he thought P.R. had stopped enforcement, M.V. testified:

> "She did stop enforcement. The County garnished two of my checks then, and then they stopped garnishing it due to the fact that she called and stopped it after I presented her with the first DNA test."

The County confirmed that, according to its records, "[*t*]*his case has been closed at Mom's request*" since in or around May 2002. (Italics added.) Based on this exchange—and P.R.'s counsel's illogical explanation of "[P.R.'s] misunderstanding of the system"—the court made its Arrearages Order "without prejudice for 90 days," during which time M.V. could file amended pleadings, going into further detail as to P.R.'s statements and actions and his reliance and responses.

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6 At the hearing, P.R.'s counsel stated that 11 days earlier P.R. had filed "a notice of intent to seek sanctions under [Family Code section] 271" as well as supporting documentation. The court stated that it did not have such a motion in its file and following argument stated that it was reserving its ruling. The record on appeal does not contain such a motion, although the minute order following the hearing contains a ruling denying P.R.'s motion for Family Code section 271 fees.

Accordingly, in November 2016, M.V. filed a request for an order "cancelling child support, arrears and interest due to [M.V.'s] detrimental reliance & equitable estoppel." (Bolding and some capitalization omitted.) Consistent with his two prior declarations, M.V. testified:

> "In early 2001 I, [M.V.] presented [P.R.] with the results of a DNA paternity test I had done privately. The results excluded me of being the biological father of her son[, previously identified in this opinion as M.A.V.]. After seeing the results [P.R.] became very upset and told me since I'm not his father that I have no business being in her or her son's life, and I agreed. I then reminded her that the child support order would need to be stopped. At the time, I was working for Maisano Produce Distributers and so far two of my checks were garnished for child support. I called [the County] to ask what was going on and they informed me that [P.R.] had contacted them and closed the case so they would no longer be garnishing my wages; however, I would have to keep the child on my medical insurance because it was part of the order. I kept trying to remove the child from my insurance but my employer would not let me because of a letter from [the County] stating the child was to remain on the insurance. A few months later [P.R.] and her husband, the man who has raised [M.A.V.], contacted my employer demanding that [M.A.V.] be removed from my insurance policy so they could put [M.A.V.] on their insurance policy. My employer complied. After that point, I was never informed by [P.R.] or [the County] of the case being opened or enforcement of money until January 2013. I filed a motion to have the order and paternity set aside. I asked [the County] if they were going to begin garnishing my wages and they said no because [P.R.] was not enforcing the money portion of the order. They also informed me that there was no arrears balance because the case had been closed by [P.R.] and that she was not cooperating with them. In 2014, I was in contact with [P.R.] and she requested another DNA test. I agreed and we had a DNA test done through the court process, which again confirmed I am not the biological father of her child. After receiving the results she apologized to me, assured me she would not pursue me for money and that she was going to work on changing her son's name. She also told me that [M.A.V.'s] father is the man who has raised him. . . . In January 2015, I was contacted by [the County] and informed that [P.R.] was now requesting child support. Since then I

> have been struggling to maintain the proper support that is needed by my family [of a wife and three children], because I have to pay money to [P.R.] that she has no right to, that she has lied to receive. [P.R.'s] request of an arrears balance of over $49,210 is completely ridiculous, since she is the one who stopped enforcing child support; therefore, it should be denied. . . . Even the [C]ounty has said in court that she closed the case. If [P.R.] would not ha[ve] closed the case I would have fought this case in 2001. If the best interest of her son[, M.A.V.,] was her intention she would not have closed the case. I pray the court sees this request for what it is, a desperate and final attempt of financial gain and modify the previous judgment and award nothing to [P.R.]."

M.V.'s prior employer confirmed M.V.'s testimony regarding the wage garnishment, the insurance, and the County's and P.R.'s involvement in both:

> "[M.V.] was my employee between 1999-2006 at my company Maisano Produce Distributor. [¶] . . . In 2002, our office received a letter from [the County] notifying me of the wage garnishment in [M.V.'s] child support case. [¶] . . . The wage garnishment lasted for only two months and then stopped. [¶] . . . I received a notice from [the County] notifying of the termination of the wage garnishment. [¶] . . . As the result of the notice from [the County], I stopped withholding money from [M.V.'s] paycheck accordingly. [¶] . . . On or about 2002, [P.R.] contacted our office and demanded that her son be removed from [M.V.'s] health insurance coverage. I also complied with that request."

In his points and authorities, M.V. contended that, under the doctrine of equitable estoppel, P.R. should not be entitled to receive anything from M.V.

In response to M.V.'s request, P.R. filed a memorandum of points and authorities in which she asserted that the judgment of paternity was final and that the doctrine of equitable estoppel did not apply to the facts of this case. In her supporting declaration, P.R. testified as to what she did and did not say to the County, including an explanation

as to her misunderstanding regarding the County's efforts to collect child support from M.V.

In response to M.V.'s request, the County filed an opposition in which it argued that, as a matter of substantive law, equitable estoppel did not apply. The County also opposed and sought to quash M.V.'s subpoena for the production of its records relating to the child support order at issue, including all contacts by and with M.V. and P.R.

By order filed in late January 2017, the court required the County to produce specified items from its files and allowed the parties to file further pleadings by March 8, 2017. M.V. submitted additional evidence and briefing; and P.R. submitted additional evidence, substantive arguments, responsive arguments, and evidentiary objections. In M.V.'s supplemental brief, M.V. presented additional authorities, arguing that, "[u]nder the doctrine of unclean hands [P.R.] is certainly barred from recovery."

On March 24, 2017, the court issued a 30-page statement of decision. P.R. filed 13 pages containing more than 50 objections on April 4, 2017; and on May 3, 2017, the court filed a "partial response" to a few of P.R.'s objections, reserved ruling on the remaining objections, and gave the parties until May 31, 2017, to file additional evidence and arguments related to this partial response. P.R. filed additional argument on May 31, 2017; and on June 2, 2017, the court filed an additional 32 pages responding individually to each of P.R.'s remaining objections. The court concluded this last filing by stating that its "Final Statement of Decision" consisted of the court's March 24 statement of decision,

May 3 partial responses to P.R.'s objections, and June 2 additional responses to P.R.'s objections.[7]

After painstakingly setting forth the 18-year history of the case, the court ruled that, based on the equities—including consideration of the doctrine of unclean hands[8]—"[P.R.] is estopped from collecting arrears in this case" and ordered "a permanent stay of all enforcement of arrears[.]" The court expressly acknowledged that "[t]he unique and unusual facts in this case make it a case of first impression, requiring the Court's use of its broad discretion."[9]

Disagreeing with P.R.'s suggestion that M.V. allegedly had unclean hands because he was not in compliance with the court order for support, the court explained: "The Court continues to find that it is [P.R.] who came into court with unclean hands when she dishonestly stated and continued to state that [M.V.] had *refused* to pay child support,

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7 This procedure does not come close to following what is required for a statement of decision. (See generally Code Civ. Proc., § 632; Cal. Rules of Court, rule 3.1590.) However, this is the procedure the parties and trial court employed without complaint, and on appeal neither of the parties objects.

8 The court quoted from *In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal.App.4th 28, 38: " 'Family law court is a court of equity.' '*Those who seek equity, must do equity and have* "*clean hands*." ['] " (Italics added.)

9 The court also ruled that, based on the equities, the doctrines of promissory estoppel and equitable estoppel applied to bar P.R. from enforcing the child support order. Because, as we explain *post*, the trial court did not abuse its discretion in applying the doctrine of unclean hands, we do not consider—and, accordingly, express no opinion regarding—the application of promissory estoppel or equitable estoppel to the facts of this case.

when her statements, her conduct and his conduct show otherwise." In reaching this ultimate finding, the court made extensive interim findings, including the following:

- "[**M.V.**] **is Credible**." (Original bolding and underscoring.) In particular, the court noted the consistency in M.V.'s testimony in March 2013, July 2013, September 2016, and November 2016—*all of which was corroborated by the County's records*.
- "The Court finds [P.R.] has a propensity to say whatever she needs to say to support her claim for arrears and accordingly, the Court does not find her to be a credible witness."
- When M.V. presented P.R. with the results of the October 2000 DNA testing, P.R. agreed that M.V. should not be involved in M.A.V.'s life. With regard to enforcement of the child support order, beginning in 2001, P.R. not only "stated she would take care of it," she "did in fact take care of it."[10]
- At the request of P.R., "between November 2001 and January 2015, the case remained closed with the exception of December 12, 2012 - January 31, 2013 and August 14, 2013 - September 11, 2013." "Other than these two brief periods of time, there was no enforcement for 14 years"; and even during each of these two times, "the case was closed before the wage assignment could go into place."

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10 At a hearing in March 2013, M.V. testified that, after he presented P.R. with the DNA test results in early 2001, she later told him that "she had closed the case"; and at a hearing in July 2013, in reference to the initial enforcement of the child support order, P.R. nodded affirmatively when M.V.'s attorney quoted P.R.'s 2001 statement that she would " 'take care of it.' "

- "County records show [P.R.] did in fact request help in removing [M.V.'s] name from the birth certificate. County records also show that she expressed her concern that if child support was collected, [M.V.] would want to be in [M.A.V.'s] life. [¶] . . . [¶] . . . [P.R.] clearly did not believe [M.V.] was the father and on multiple occasions, she asked the County for help in removing him from the case."
- In consideration of "all of the evidence, including statements previously made by [P.R.] and in particular [P.R.'s] conduct, the Court believes that [P.R.] intended and did close her child support case against [M.V.] after learning of the genetic test results which excluded him. Her testimony and her statement under oath that she did otherwise is simply not believable. The County's records clearly show that she closed her case and was in fact *adamant* about the closure of the case."
- Contrary to P.R.'s testimony that "she was confused about the process . . . , [t]he evidence shows [P.R.] clearly understood the process; she called and visited the County's office often. It is unreasonable to assert that she was confused and mistaken about this case being closed for 14 years."
- "[T]he totality of the evidence shows that [P.R.] had no intention or expectation of child support from [M.V.]. After being presented with the DNA results, her intention was to keep the promise she had made to [M.V.] and to sever all ties between [M.V.] and [M.A.V.]."
- Given this background and *contrary to P.R.'s position in her request for arrears*, "[t]here is no evidence that [M.V.] ever refused to pay."

Meanwhile, on May 8, 2017, P.R. had filed a notice of appeal from the court's March 24, 2017 (*initial*) statement of decision. This was at a time when P.R. had filed more than 50 objections (Apr. 7, 2017) and the court had filed a partial response to a few of the objections (May 3, 2017)—expressly reserving ruling on the remaining objections and giving the parties a month in which to file additional evidence and arguments related to this partial response.

In response to the filing of P.R.'s opening brief, the Attorney General filed a letter stating that it represented the County and that the County would not be filing a brief.

## II. DISCUSSION

In her opening brief, P.R. raises a number of issues, but only once suggests that the doctrine of unclean hands should not apply—and in that one instance, she argues only that a case that applied the doctrine, *In re Marriage of Boswell* (2014) 225 Cal.App.4th 1172 (*Marriage of Boswell*), is distinguishable and should not be followed. P.R. does not mention unclean hands in her reply brief. In short, P.R. does not attempt to explain how or why the trial court abused its discretion in applying the doctrine here. Nonetheless, as we explain, based on our independent review of the record, we are satisfied that the trial court did not abuse its discretion in applying the doctrine of unclean hands to preclude P.R. from enforcing the child support arrearages. In the other arguments that P.R. does present on appeal, she has not met her burden of establishing reversible error.

First, however, we must address a jurisdictional issue that the parties have not discussed.

A. *P.R.'s Notice of Appeal Will Be Deemed Timely and From an Appealable Postjudgment Order*

An appealable judgment or order is a jurisdictional prerequisite to an appeal. (Code Civ. Proc., § 904.1; *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696.)

The court entered a final judgment of paternity on September 24, 1999. Thus, any postjudgment order is appealable (Code Civ. Proc., § 904.1, subd. (a)(2)), so long as it is a *final* order (see *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 652-654 [collecting cases where postjudgment orders that "lacked finality" were not appealable]; *Finance Holding Co., LLC v. The American Institute of Certified Tax Coaches, Inc.* (2018) 29 Cal.App.5th 663, 674). P.R. appealed from the March 24, 2017 (initial) statement of decision, which is a postjudgment order; thus, an initial issue is whether the March 24 statement of decision is a *final* order.

We conclude that the March 24 statement of decision is not a final order. On April 7, 2017, P.R. objected to the March 24 statement of decision on the basis that it did not state whether it "constitute[d] the trial court's final determination on the merits"; and P.R. requested that the court either enter a final order or clarify that the statement of decision was, in fact, the court's final determination on the merits. Indeed, the first sentence of P.R.'s objection correctly cites *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901 (*Alan*) for the general proposition that "[a] Statement of Decision is not appealable." Moreover, on May 3, 2017—five days before P.R. noticed the appeal—the court filed a partial response to P.R.'s objections, expressly reserving

ruling on the remaining objections and giving the parties a month in which to file additional evidence and arguments.[11]

Nonetheless, as *Alan* allows, we exercise our discretion to treat what the trial court here characterized as its "Final Statement of Decision" on June 2, 2017—which consists of the court's March 24 statement of decision, May 3 partial responses to P.R.'s objections, and June 2 additional responses to P.R.'s objections (together, Final Statement of Decision)—as an appealable final decision on the merits. (See *Alan*, *supra*, 40 Cal.4th at p. 901.)

That said, however, P.R. did not appeal from the June 2, 2017 order or from what the June 2, 2017 order defined the court's Final Statement of Decision. Accordingly, on our own motion, we deem the premature and defective notice of appeal from the March 24, 2017 statement of decision to have been filed immediately after, and as an appeal from, the superior court's June 2, 2017 response to P.R.'s remaining objections. (Cal. Rules of Court, rule 8.104(d)(2); *Rodriguez v. City of Santa Cruz* (2014) 227 Cal.App.4th 1443, 1450 [notice of appeal filed after statement of decision and before judgment].) The June 2, 2017 order defined the Final Statement of Decision, which we have just deemed to be a final postjudgment order.

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11 The May 8, 2017 notice of appeal did not deprive the trial court of jurisdiction to file its June 2, 2017 response to P.R.'s remaining objections. Since the May 8 notice attempted to appeal from a nonfinal—and thus nonappealable—order, the notice was ineffective. (See *Garat v. City of Riverside* (1991) 2 CalApp.4th 259, 279, disapproved on other grounds in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11.)

Thus, P.R.'s appeal is from the June 2, 2017 order, which includes a ruling that P.R. is precluded from enforcing the Arrearages Order and defines the court's Final Statement of Decision.

B. *P.R. Did Not Meet Her Appellate Burden of Establishing That the Trial Court Abused Its Discretion in Precluding Her from Enforcing the Arrearages Order Based on an Application of the Doctrine of Unclean Hands*

In the Final Statement of Decision, the trial court precluded P.R. from enforcing the Arrearages Order based on her inequitable conduct.[12] The court based its ruling on the finding that P.R. had told M.V. (and the County) for years that she did not want the child support, but then "came into court with unclean hands when she dishonestly stated and continued to state that [M.V.] had *refused* to pay child support, when her statements, her conduct and his conduct show otherwise." The court explained:

> "[P.R.] contradicted her position numerous times and changed her story for the purpose of obtaining arrears. She was not honest on what led up to her closing her case and in fact was not honest about closing the case at all. The County records provide a reliable record of what occurred in this case. The records show that it was the mother who was adamant about not having enforcement, rather than

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12 P.R. wrongly suggests on appeal that, by its Final Statement of Decision, the court: changed, or refused to recognize, the September 1999 judgment by which M.V. was found to be M.A.V.'s legal parent; modified the August 2001 child support order; or modified, reduced, forgave, or terminated the September 2016 Arrearages Order. The judgment and the two orders remain unaffected by the Final Statement of Decision; *only P.R.'s ability to enforce the Arrearages Order* has been affected. (Cf. *County of Santa Clara v. Wilson* (2003) 111 Cal.App.4th 1324, 1326 (*Wilson*) [trial court lacked power to forgive accrued child support arrearages, but retained equitable discretion to determine extent to which arrearages order would be enforced]; *In re Marriage of Sandy* (1980) 113 Cal.App.3d 724, 728 ["The court ha[s] equitable discretion to determine whether and to what extent the original support provision should be enforced by execution."].)

> [M.V.] refusing to pay support for the past 14 years as alleged by [P.R.].
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> "When [P.R.] filed the Motion for a Judicial Determination of Arrears on July 25, 2016, she alleged that [M.V.] had *refused* to pay her child support all of these years. The Court finds that she requested non-enforcement in November 2001 through [the County] and she did not subsequently request payments from [M.V.] directly after she unilaterally closed the case with [the County]. Even in the face of the County records, [P.R.] continues to provide conflicting positions and attempts to misconstrue the facts. She has said the following: 1. She never closed the case; 2. She thought she closed her case with her partner, Mr. S[.], not with [M.V.]; 3. She thought the case was frozen; and 4. She thought the child support never stopped, but that for all of these years, it had been going towards Medi-Cal."

As we explain, P.R. did not meet her burden of establishing on appeal that the trial court erred in applying the equitable doctrine of unclean hands to preclude P.R. from enforcing the Arrearages Order.

1. *Law*

"The defense of unclean hands arises from the maxim, ' " 'He who comes into Equity must come with clean hands.' " ' " (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978 (*Kendall-Jackson*); accord, *Marriage of Boswell*, *supra,* 225 Cal.App.4th at p. 1174 [" 'Those who seek equity, must do equity and have "clean hands".' "].) As our federal Supreme Court explained almost 75 years ago: "This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. That doctrine is rooted in the historical concept of court of equity as a vehicle

for affirmatively enforcing the requirements of conscience and good faith." (*Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.* (1945) 324 U.S. 806, 814 (*Precision Instrument Mfg.*) [action for breach of contract and patent infringement].)

The doctrine of unclean hands "protects judicial integrity because allowing a plaintiff with unclean hands to recover in an action creates doubts as to the justice provided by the judicial system. Thus, precluding recovery to the unclean plaintiff protects the court's, rather than the opposing party's, interests." (*Kendall-Jackson*, *supra*, 76 Cal.App.4th at p. 978.)

Application of the doctrine is not a legal or technical defense that is used as a shield against a particular claim; rather, " 'it is an equitable rationale for refusing a plaintiff relief where principles of fairness dictate that the plaintiff should not recover, *regardless of the merits of his claim*. It is available to protect the court from having its powers used to bring about an inequitable result in the litigation before it.' " (*Stine v. Dell'Osso* (2014) 230 Cal.App.4th 834, 843-844, italics added (*Stine*).) Thus, " ' "whenever a party, who, as *actor*, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him . . . ; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy." ' " (*Katz v. Karlsson* (1948) 84 Cal.App.2d 469, 474-475 (*Katz*).) Notably, " '[a]ny conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to invoke the doctrine.' " (*Kendall-Jackson*, *supra*, 76 Cal.App.4th at p. 979.)

The misconduct that brings the doctrine of unclean hands into play must relate directly to the cause at issue. (*Kendall-Jackson*, *supra*, 76 Cal.App.4th at p. 979.) " 'The issue is not that the plaintiff's hands are dirty, but rather " ' "that the manner of dirtying renders inequitable the assertion of such rights against the defendant." ' " ' [Citation.] The misconduct also must ' " 'prejudicially affect . . . the rights of the person against whom the relief is sought so that it would be inequitable to grant such relief.' " ' " (*Ibid.*)

"The family law court is a court of equity and fairness." (*Marriage of Boswell*, *supra*, 225 Cal.App.4th at p. 1174.) Thus, " '[f]amily law cases "are equitable proceedings in which the court must have the ability to exercise discretion to achieve fairness and equity." ' " (*Id.* at p. 1175.) "Under California law, the trial court has discretion to determine the appropriate means of enforcing a judgment for child support. [Citations.] In exercising that discretion, the trial court can, and should take the equities of the situation into account." (*Keith G. v. Suzanne H.* (1998) 62 Cal.App.4th 853, 861-862 (*Keith G.*).)

As specifically applicable here, "a family law court, in the exercise of its broad equitable discretion, and upon a finding of 'unclean hands,' may decline to enforce a child support arrearage judgment." (*Marriage of Boswell*, *supra*, 225 Cal.App.4th at p. 1175.) Thus, a party like P.R., who comes to family court seeking enforcement of child support arrearages, "must come into court with clean hands, and keep them clean, or [s]he will be denied relief, *regardless of the merits of h*[*er*] *claim*." (*Kendall-Jackson*, *supra*, 76 Cal.App.4th at p. 978, italics added; accord, *In re Marriage of Cutler* (2000) 79

Cal.App.4th 460, 478, 479 [supporting spouse unable to vacate arrearages order, because "a party seeking equitable relief must come into court with clean hands"].)

From these general principles, California courts have applied a three-pronged test to determine the effect to be given to the conduct of a petitioning party's potentially unclean hands. Whether the specific actions may bar the claim for relief depends on: "(1) analogous case law, (2) the nature of the misconduct, and (3) the relationship of the misconduct to the claimed injuries." (*Kendall-Jackson*, *supra*, 76 Cal.App.4th at p. 979, citing *Blain v. Doctor's Co.* (1990) 222 Cal.App.3d 1048, 1060 (*Blain*); *Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612, 618-621; accord, *Stine*, *supra*, 230 Cal.App.4th at p. 844.)

The trial court's decision whether to apply the doctrine of unclean hands in an action to enforce child support arrearages is an "exercise of [the court's] broad equitable discretion." (*Marriage of Boswell*, *supra*, 225 Cal.App.4th at p. 1175; accord, *Keith G.*, *supra*, 62 Cal.App.4th at p. 861 [court has discretion to consider equities in determining *means to enforce child support arrearages order*].) Thus, we review that decision for an abuse of discretion.[13] (See *Keith G.*, *supra*, 62 Cal.App.4th at pp. 861-862.) The applicable test for an abuse of discretion is " ' " 'whether the trial court exceeded the

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13 We are aware of other authority holding that the trial court's decision whether a claimant's actions qualify as unclean hands is a "question of fact" and, thus, reviewed for substantial evidence. (*Kendall-Jackson*, *supra*, 76 Cal.App.4th at p. 978.) However, since a trial court abuses its discretion if its discretionary decision is not supported by substantial evidence (*In re Marriage of Swain* (2018) 21 Cal.App.5th 830, 836-837), our review for an abuse of discretion *includes* consideration of the substantiality of the evidence.

bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " ' " (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 118, quoting *Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.)

P.R., as the appellant, has the burden of establishing an abuse of discretion. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) An appellant's showing on appeal is insufficient if it presents a state of facts which merely affords an opportunity for a difference of opinion. (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682; *Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631 [appellate court considers only whether the record contains substantial evidence *in support of the exercise of discretion actually made*, not the existence or strength of the evidence in support of a different ruling].) "[A] reviewing court should not disturb the exercise of a trial court's discretion unless it appears that there has been a miscarriage of justice." (*Denham*, at p. 566.)

2. *Analysis*

By failing to address the trial court's application of the unclean hands doctrine in the context of the court's exercise of discretion, P.R. forfeited appellate review of the issue. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 ["The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived."], citing Cal. Rules of Court, rule 8.204(a)(1)(B).) Nonetheless, we have independently reviewed the record on appeal, and—based on our consideration of analogous case law, the nature of the misconduct, and the relationship of the

misconduct to the claimed injuries, as outlined in *Blain, supra,* 222 Cal.App.3d at page 1060, and *Kendall-Jackson*, *supra*, 76 Cal.App.4th at page 979—we are satisfied that the trial court's exercise of discretion is well within the bounds of reason.

In conducting this analysis, we are mindful of our state's "strong public policy in favor of adequate child support" (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283); indeed, California's statewide uniform child support guideline (Fam. Code, §§ 4050-4076) "seeks to place the interest of children as the state's top priority" (Fam. Code, § 4053, subd. (e)). We are also mindful that P.R.'s "claimed injuries" in this case are the loss of the ability to collect child support arrearages—based on final court rulings that established paternity, child support, and the amount of arrearages. However, our role in this appeal is limited to determining whether the trial court's decision to shut the doors of the courthouse based on P.R.'s inequitable conduct—irrespective of the merits of her claim—exceeded the bounds of reason.

a. *Analogous Case Law*

*Blain*, *supra*, 222 Cal.App.3d 1048, provides guidance. There, a doctor brought a legal malpractice action against his former attorney, alleging injuries from the doctor's adherence to the attorney's advice to lie at a deposition in an underlying medical malpractice action against the doctor. (*Id.* at p. 1052.) One of the doctor's claims was that, as a result of the "alleged perjury" at his deposition, the doctor was uninsurable and without insurance his ability to practice medicine was impaired. (*Id.* at p. 1064.) The appellate court applied the doctrine of unclean hands to preclude the doctor's recovery on this claim on the basis that his lies at the deposition were " 'act[s] involving dishonesty or

corruption' " related to his licensing as a physician. (*Ibid*.) Regardless *why* he lied (i.e., regardless whether the defendant attorney advised him to lie), *because* he lied, the court applied the unclean hands doctrine to preclude the doctor from pursuing the licensing-related damages claim against his former attorney. (*Ibid*.)

In the present case, P.R. not only lied in her initial request for relief from the court—"When [P.R.] filed the Motion for a Judicial Determination of Arrears on July 25, 2016, she alleged that [M.V.] had *refused* to pay her child support all of these years"—but throughout the arrearages and enforcement proceedings, P.R. also "contradicted her position numerous times and changed her story for the purpose of obtaining arrears. She was not honest on what led up to her closing her case and in fact was not honest about closing the case at all. The County records provide a reliable record of what occurred in this case. . . . [¶] . . . Even in the face of the County records, [P.R.] continues to provide conflicting positions and attempts to misconstrue the facts."

Moreover, P.R.'s dishonesty in court in 2016-2017 did not involve merely a position inconsistent with one she had expressed on a prior occasion. "The records show that it was [P.R.] who was adamant about not having enforcement, rather than [M.V.] refusing to pay support *for the past 14 years as alleged by* [*P.R.*]." (Italics added.) At the request of P.R., "between November 2001 and January 2015, the case remained closed with the exception of [two occasions totaling approximately two months in 2013. [¶] . . . [¶] . . . Other than these two brief periods of time, there was no enforcement for 14 years"; and even during each of these two times, "the case was closed before the wage assignment could go into place."

We note, as P.R. emphasizes, that certain potentially analogous cases in which the unclean hands doctrine affected the enforcement of arrearages involved a supported spouse who actively concealed the child, thereby precluding the supporting parent's relationship with the supported child.[14] (E.g., *In re Marriage of Damico* (1994) 7 Cal.4th 673, 676, 685 [remand for determination of concealment]; *Marriage of Boswell, supra,* 225Cal.App.4th at p. 1174.) However, neither of these cases nor any other case cited by P.R. contains a requirement that a child be concealed before the doctrine of unclean hands may be applied to bar enforcement of a child support arrearages order. To the contrary, for purposes of unclean hands the focus is on whether the supported spouse's actions were " 'unjust' " and whether "an 'inequitable result' " would follow a ruling that allowed the supported spouse to enforce the order for arrearages. (*Boswell, supra,* 225 Cal.App.4th at p. 1175.) The record in the present appeal supports findings *both* that P.R.'s actions here were unjust (as established *ante*) *and* that an inequitable result would have followed a ruling here that allowed P.R. to enforce the Arrearages Order (because, for the 14 years prior to the commencement of the proceedings to

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14 We disagree with P.R.'s suggestion that active concealment, as in *Boswell* or *Damico,* is more "unclean" than anything P.R. did here. According to P.R.: "Even assuming the worst, all that P.R. can be said to have done is to have viewed some alleged test result which purported to say that M.V. was not the father, and then cause [the County] to cease collection. M.V., as a matter of law, ***is*** the father." In making such an argument, P.R. not only fails to acknowledge her independently confirmed actions over the 14-year time period, but also ignores the trial court's findings, quoted in detail *post*, which include specific instances of dishonesty directly related to the child support arrearages proceedings.

account for arrears, P.R. "was adamant about not having enforcement"—both with M.V. and the County).

b. *The Nature of the Misconduct*

"[T]he totality of the evidence shows that [P.R.] had no intention or expectation of child support from [M.V.]. After being presented with the DNA results, her intention was to keep the promise she had made to [M.V.] and to sever all ties between [M.V.] and [M.A.V.]." Given this, P.R.'s inequitable conduct included: alleging under penalty of perjury "that [M.V.] had *refused* to pay her child support all of these years," when in fact "she requested non-enforcement in November 2001" and later "unilaterally closed the case with [the County]"; being dishonest to the court "on what led up to her closing the case" and "about closing the case at all"; and "contradict[ing] her position numerous times and chang[ing] her story *for the purpose of obtaining arrears*." (Second italics added.)

P.R. does not challenge any of these findings of misconduct or bad faith in her prior actions.[15]

c. *Relationship of the Misconduct to the Claimed Injuries*

The misconduct that triggers an application of the unclean hands doctrine must relate directly to the matter in which the petitioning party seeks relief. (*Kendall-Jackson*, *supra*, 76 Cal.App.4th at p. 979; *Blain*, *supra*, 222 Cal.App.3d at p. 1060; see *Precision*

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15 To the extent P.R.'s opening brief on appeal contains a substantial evidence challenge to the trial court's findings, it is not directed to any findings of, or related to, unclean hands.

*Instrument Mfg., supra,* 324 U.S. at p. 814.) Here, P.R.'s misconduct (summarized in the immediately preceding paragraph and set forth in greater detail at the end of pt. II., *ante*) relates entirely and exclusively to her effort to collect child support—which, of course, was the basis of her July 2016 request for an order to account for 15 years of child support arrears.

d. *Conclusion*

Because P.R. " ' "violated conscience, or good faith, or other equitable principle" ' " in " ' "seek[ing] to set the judicial machinery in motion" ' " to account for child support arrears, the trial court properly applied the doctrine of unclean hands in ruling that " ' "the doors of the court will be shut against h[er]" ' " in collecting the arrearages. (*Katz, supra,* 84 Cal.App.2d at pp. 474-475; accord, *Stine, supra,* 230 Cal.App.4th at pp. 843-844 [unclean hands doctrine "protect[s] the court from having its powers used to bring about an inequitable result in the litigation before it"].) P.R. did not meet her burden of establishing an abuse of discretion, and based on our independent review of the record, the trial court's decision to apply the doctrine of unclean hands to bar P.R.'s enforcement of the Arrearages Order did not exceed the bounds of reason.

In reaching our conclusion here, we agree with and adapt language from *Keith G., supra,* 62 Cal.App.4th 853, where the appellate court affirmed the trial court's application of the unclean hands doctrine to allow a setoff to child support based on the supported parent's prior inequitable conduct related to support: "After weighing the equities, the trial court wisely fashioned a commonsense remedy that does not harm [M.V.] and does not reward [P.R.] for [her misconduct]. The overall policy of the law is fairness.

[Citation.] *The trial court's order denying enforcement can only be described as fair*." (*Id.* at p. 862, italics added.)

C. *The Unavailability of the June 5, 2001 Reporter's Transcript Does Not Support a Basis for Relief on Appeal*

On June 5, 2001, the County moved for orders setting monthly child support for M.A.V. based on the state guideline and requiring M.V. to provide health insurance for M.A.V. through M.V.'s employer. The minute order from this hearing indicates: The County and M.V. were present; P.R. was not present; and the matter was continued until August 21, 2001, "for [M.V.] to file [a] motion for genetic test[ing]." In this appeal, in response to P.R.'s designation of the reporter's transcript from the June 5, 2001 hearing, the court reporter filed an affidavit, stating that she was unable to produce the June 5, 2001 transcript as requested because "the notes were beyond the statutory limit for storage per Government Code [section ]69955[, subdivision ](e)[,] and have been destroyed."[16] (Capitalization omitted.)

P.R.'s lead argument on appeal is that the Final Statement of Decision should be vacated and the matter remanded for a new trial under Code of Civil Procedure section 914, which provides in part: "When the right to a phonographic report has not been waived and when it shall be impossible to have a phonographic report of the trial transcribed by a stenographic reporter as provided by law or by rule, . . . because of the

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16 The affidavit also indicates that the reporter destroyed her notes from the continued hearing on August 21, 2001—at which the court granted the County's motion and ordered M.V. to pay monthly child support of $203 and to provide health insurance for M.A.V. P.R. does not argue on appeal any prejudice from the lack of a transcript from this hearing.

loss or destruction, in whole or in substantial part, of the notes of such reporter, the trial court or a judge thereof, or the reviewing court shall have power to set aside and vacate the judgment, order or decree from which an appeal has been taken or is to be taken and to order a new trial of the action or proceeding."

According to P.R., she is "at a distinct disadvantage by not having this transcript which should have set forth the issues and contentions to be litigated as to the issues of support and support arrearage[s]." We disagree. First, P.R. did not mention this transcript during the proceedings in the trial court—where Code of Civil Procedure section 914 expressly authorizes a motion for a new trial on the grounds she raises on appeal. Moreover, as the minute order indicates, all that happened at the June 5, 2001 hearing was a continuance of the proceedings from June 5 until August 21, 2001. Thus, by her presentation, P.R. failed to meet her burden of showing *either* "reasonable diligence" *or* "the presence of substantial issues showing the necessity for [the transcript]"—*both* required for relief according to *Duarte v. Rivers* (1949) 90 Cal.App.2d 152, 155 (former Code Civ. Proc., § 953e).

D. *The* Merits *of P.R.'s Claim to Enforce the Arrearages Order Are Irrelevant*

On a number of different theories, P.R. argues on appeal that the trial court was not authorized to challenge: the September 1999 judgment that M.V. is M.A.V.'s parent; the August 2001 order that M.V. required to pay monthly child support of $203; or the September 2016 Arrearages Order that determined child support arrearages (principal and interest) to be $83,280.02.

P.R. further argues that, because the September 1999 paternity judgment is final, the doctrine of res judicata bars further review of the judgment's provision that M.V. was liable for support. Similarly, P.R. contends that the trial court's August 21, 2001 order—in which the court required M.V. to pay monthly child support of $203 and to provide health insurance for M.A.V.—is final, and the doctrine of res judicata bars further review more than 15 years later.

P.R. also reminds us that, just because the County did not enforce the August 2001 child support order, M.V. is not relieved of his responsibilities under the order. In a related argument, P.R. contends that there is no basis, in law or equity, to relieve M.V. from his failure to have paid child support.

Finally, P.R. argues that no authority exists to reduce, forgive, or retroactively modify the award of either monthly child support of $203 or arrearages of $83,280.92.

We will assume, without deciding, that each of P.R.'s arguments is legally sound. Nonetheless, P.R. has not shown trial court error. The Final Statement of Decision's order staying enforcement of the Arrearages Order does not affect either the September 1999 judgment, the August 2001 child support order, or the September 2016 Arrearages Order. Rather, the Final Statement of Decision merely bars P.R. from enforcing the Arrearages Order—i.e., from collecting the arrearages—based on P.R.'s unclean hands related to obtaining the Arrearages Order. (Cf. *Wilson*, *supra*, 111 Cal.App.4th at p. 1326.)

As we explained at part II.B.1., *ante*, *the merits of P.R.'s claim*—which includes consideration of the finality of the paternity judgment, the child support order, and the

Arrearages Order, as well as the law related to the collection of child support—are irrelevant to the consideration of the application of the unclean hands doctrine. (*Stine*, *supra*, 230 Cal.App.4th at pp. 843-844; *Kendall-Jackson*, *supra*, 76 Cal.App.4th at pp. 978, 985.) By exclusively focusing on *M.V.*'s behavior and actions, P.R. fails to acknowledge—let alone recognize and present potential defenses to—the unfairness and inequity in *her* behavior and actions (as the petitioning party), which are the proper focus in an exercise of the discretion whether to apply the doctrine of unclean hands. (*Stine*, *supra*, 230 Cal.App.4th at pp. 843-844; *Keith G.*, *supra*, 62 Cal.App.4th at p. 862.)

## III. DISPOSITION

The June 2, 2017, order—which defines the Final Statement of Decision to consist of the trial court's March 24, 2017 statement of decision, May 3, 2017 partial responses to P.R.'s objections, and June 2, 2017 additional responses to P.R.'s objections—is affirmed. M.V. is entitled to his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

IRION, J.

WE CONCUR:

HALLER, Acting P. J.

DATO, J.